



[PR Intro]

<b>PLAINTIFF</b>
U.S. District Court - NDCAL
<b>4:20-cv-05640-YGR-TSH</b>
<i>Epic Games, Inc. v Apple Inc.</i>
<b>CX-0529</b>
Ex. No. <u>CX-0529</u>
Date Entered _____
By _____

APL-EG\_10681518

APL-EG\_11405103

## Epic v Apple Timeline

- **May 2021:** The District Court held a 16-day bench trial featuring 26 witnesses and 520 exhibits
- **September 2021:** Apple won a resounding victory, with 9 of 10 claims having been decided in Apple's favor
- **April 2023:** The Ninth Circuit upheld that ruling

[Jen]

- As this case has been ongoing for more than three years, we wanted to briefly recap the history.
- Epic filed its lawsuit against Apple in August 2020.
- We had an extensive trial before a federal judge, Hon. Yvonne Gonzalez Rogers, from May 3-24, 2021, and she issued her decision on September 10, 2021.
- Apple won a resounding victory — the Court found for Apple on 9 of 10 claims brought by Epic.
- In April 2023, a federal appeals court upheld that ruling.

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## Apple Prevailed at Trial

The court found for Apple on 9 of 10 claims brought by Epic, including all antitrust claims

- The Court found that Apple is not a monopolist in any relevant market
- The Court found that App Store distribution and IAP provide significant procompetitive benefits for both developers and consumers
- The Court found that App Review enhances the security and privacy of the iOS ecosystem
- The Court found that Apple's agreements with developers are lawful and that Apple is entitled to charge commissions for access to its platform

- The court found for Apple on every antitrust claim:
  - Apple is not a monopolist.
  - Apple's business model is procompetitive, giving developers and consumers better privacy, security, and an overall higher-quality product.
  - And the court found that Apple's agreements with developers are lawful and that Apple is entitled to charge commissions for access to its platform
- The court did find two provisions in Apple's guidelines were unfair under California law and ordered Apple to stop enforcing those provisions.
  - This concerns the so-called anti-steering claim, which relates to whether one of Apple's guidelines about whether developers could link users to purchasing options (like on their websites) within their apps. The District Court found that while that wasn't unlawful under federal antitrust law, it was unfair under California state law. The Ninth Circuit stayed that ruling, signaling merit to Apple's appeal. (Apple had already removed the second guideline as part of the Cameron settlement with 99% of developers). On April 24, 2023, the Ninth Circuit affirmed the district court's decision.

## California UCL Claim

The District Court ordered Apple to revise the guideline on in-app communications under California's Unfair Competition Law (UCL).

Specifically, the Court issued an injunction enjoining Apple from prohibiting developers in the United States from:

- \*(i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and
- (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app."

The Court found that Apple is entitled to charge a commission for access to its platform

- This decision allows Apple to use IAP and collect its commission.
- "Even in the absence of IAP, Apple could still charge a commission on developers."

- Specifically, the Court issued an Injunction enjoining Apple from prohibiting in the United States developers from "(i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app."
- Just to be clear, the use of IAP and charging of a commission is not a subject that's in dispute, and let me give you two examples of that.
- The court said: Apple's "Developer Agreement prohibits third party in-app purchasing systems other than Apple's IAP. The Court did not enjoin that provision..." This decision allows Apple to use IAP and collect its commission.
- And secondly as you'll hear in a moment -- and for the purposes of this, more importantly -- the court said, "Even in the absence of IAP, Apple can still charge a commission on developers."

## App Store Benefits for developers

The Court found all App Store developers benefit from:

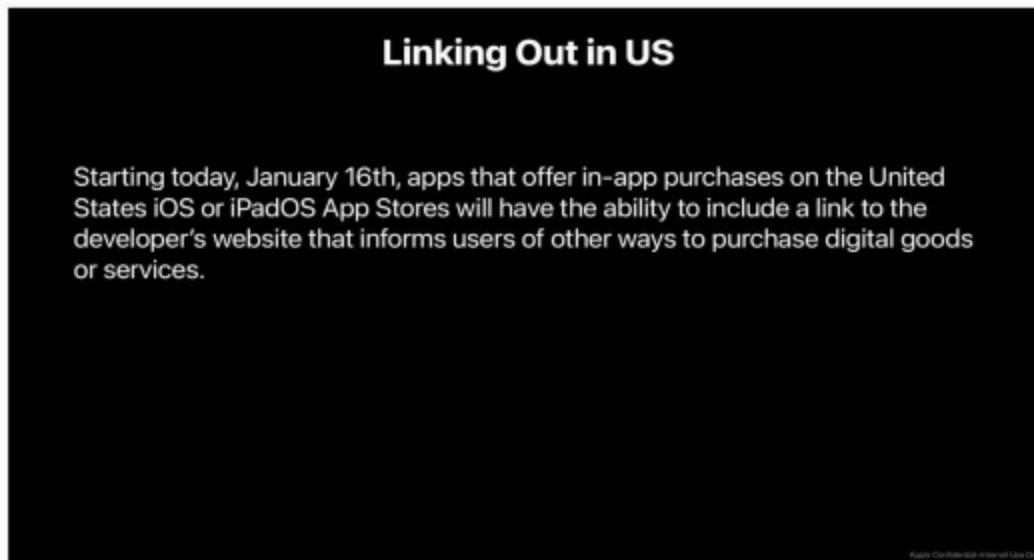
- Apple's "enormous" investment in "tools and features for iOS," including "thousands of developer tools, SDKs, and APIs" and Apple's "constant updating of ... cellphones to allow for more sophisticated apps."
- "Access to Apple's vast consumer base" as well as "the safe environment created by the App Store," which encourages users to "download apps freely and without care."

- This is because all App Store developers — including those who place buttons or links with calls to action in their apps — benefit from (among other things) Apple's platform integrity, proprietary tools and technologies protected by intellectual property, developer services and support, including services that help developers acquire, retain and reengage users, marketing and external advertising, and a safe environment for users to download and purchase apps and in-app content.
- The court found that developers benefit from:
  - Apple's "enormous" investment in "tools and features for iOS," including the "thousands of developer tools, SDKs, and APIs" and Apple's "constant updating of ... cellphones to allow for more sophisticated apps."
  - "Access to Apple's vast consumer base" as well as "the safe environment created by the App Store," which encourages users to "download apps freely and without care."

## Compliance with UCL Injunction

- Both Apple and Epic asked the Supreme Court to take up their appeals of the ruling. Today, the Supreme Court denied those requests.
- Apple will comply with the judge's decision and is submitting a Statement of Compliance to the District Court.

- Both Apple and Epic asked the Supreme Court to take up their appeals of the ruling. Today, the Supreme Court denied those requests.
- Apple will comply with the judge's decision. Today we will submit a Statement of Compliance to the court in order to make sure that the court understands how we will be affecting this change. There is nothing for the judge to do here. This is merely an equivalent of a legal FYI.
- You have a copy of this document in your inbox.
- To review what's in this document, it's now my pleasure to turn it over to my colleague Carson.



## Linking Out in US

Starting today, January 16th, apps that offer in-app purchases on the United States iOS or iPadOS App Stores will have the ability to include a link to the developer's website that informs users of other ways to purchase digital goods or services.

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[Carson]

- Because of the United States Court decision, beginning today, January 16th, apps that offer in-app purchases on the United States iOS or iPadOS App Stores will have the ability to include a link to the developer's website that informs users of other ways to purchase digital goods or services.
- There have been a couple changes to the guidelines. Those are memorialized in the document you have in your inbox. Just to make sure we're all aligned on the details, let me go through what the revised guidelines will look like.

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## Updated App Review Guidelines

### 3.1.1 In-App Purchase

If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase. Apps may not use their own mechanisms to unlock content or functionality, such as license keys, augmented reality markers, QR codes, cryptocurrencies and cryptocurrency wallets, etc.

- Let me start with 3.1.1.
- To comply with this requirement, we've revised App Review Guideline 3.1.1 and moved the requirement that apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase to guideline 3.1.1(a). This revision clarifies that apps offered in storefronts other than those eligible for the StoreKit Purchase Link Entitlement (US), and apps that do not use the entitlement, must continue to follow the requirement.

## Updated App Review Guidelines

### 3.1.1(a) Link to Other Purchase Methods

Developers may apply for an entitlement to provide a link in their app to a website the developer owns or maintains responsibility for in order to purchase such items. In accordance with the entitlement agreement, the link may inform users about where and how to purchase those in-app purchase items, and the fact that such items may be available for a comparatively lower price. The entitlement is limited to use only in the iOS or iPadOS App Store on the United States storefront. In all other storefronts, apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase.

If your app engages in misleading marketing practices, scams, or fraud in relation to the entitlement, your app will be removed from the App Store and you may be removed from the Apple Developer Program.

- We've also added Guideline 3.1.1(a), which provides developers in the US the ability to apply for the StoreKit Purchase Link Entitlement (US) to provide a link in their app to a website the developer owns or maintains responsibility for in order to purchase such items.

## Entitlement

To qualify for the StoreKit Purchase Link Entitlement (US), an app must:

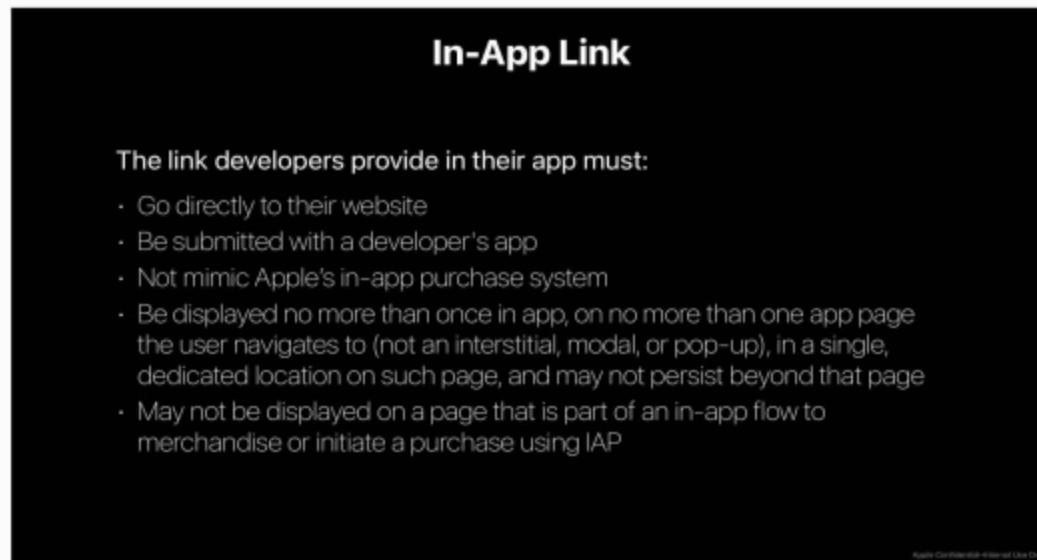
- Be available on the US iOS or iPadOS App Store;
- Offer in-app purchases in US iOS or iPadOS App Store; and
- Not participate in the Video Partner Program or News Partner Program

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- To qualify for the entitlement, an app must be available in the iOS or iPadOS App Store in the US, as well as offer Apple In-App Purchase, or IAP, through the US storefront
- In addition, apps must not be participants in the Apple Video Partner Program or News Partner Program

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- Apple will require developers to adhere to certain requirements to qualify for and use the Link Entitlement. These requirements serve a variety of purposes, but they all arise largely from the fact that External Purchase Links encourage users to leave the app and the Apple ecosystem, and undertake a transaction on the open Internet.
- These requirements are necessary to protect user privacy and security, maintain the integrity of Apple's ecosystem, promote the flow of information, avoid user confusion, and enable efficient review of developers' apps by App Review.
- The links developers provide in their app must:
  - Go directly to their website without any redirect or intermediate links or landing page;
  - Be submitted with the developer's app to the App Store;
  - May not mimic nor discourage use of Apple's in-app purchase system
  - Be displayed no more than once in an app, on an app page the user navigates to, and may not persist beyond the page on which it is shown; and
  - May not be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using IAP.

## In-App Link

**Style**  
Developers' links must follow the Plain Button style, as specified in the Human Interface Guidelines. It may not be enclosed in a shape that uses a contrasting background fill. The background surrounding the text must match the background of the app's page.

**Language**

Purchase template	Purchase from the website at <a href="http://www.example.com">www.example.com</a> .
Special offer template	For special offers, go to <a href="http://www.example.com">www.example.com</a> For a special offer, go to <a href="http://www.example.com">www.example.com</a>
Lower price template	Lower prices offered on <a href="http://www.example.com">www.example.com</a> Lower price offered on <a href="http://www.example.com">www.example.com</a>
Percent off template	To get XX% off, go to <a href="http://www.example.com">www.example.com</a>
Specific price template	Buy for \$X.XX at <a href="http://www.example.com">www.example.com</a>

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- Also, the link must adhere to Apple's design and language requirements, following the Plain Button style in the Human Interface Guidelines and leveraging language templates for consistency for users



- Here are some examples of permissible in-app links, including links on the sign in screen, the account management screen and the app page.

## Commission

A commission will apply to digital purchases facilitated through the StoreKit Purchase Link Entitlement

- 27% applied to transactions for digital goods and services within seven days
  - Applies to subsequent renewals of auto-renewing subscriptions initiated within the seven days
- 12% for participants in the Small Business Program, or if the transaction is an auto-renewal in the second year or later of an auto-renewing subscription

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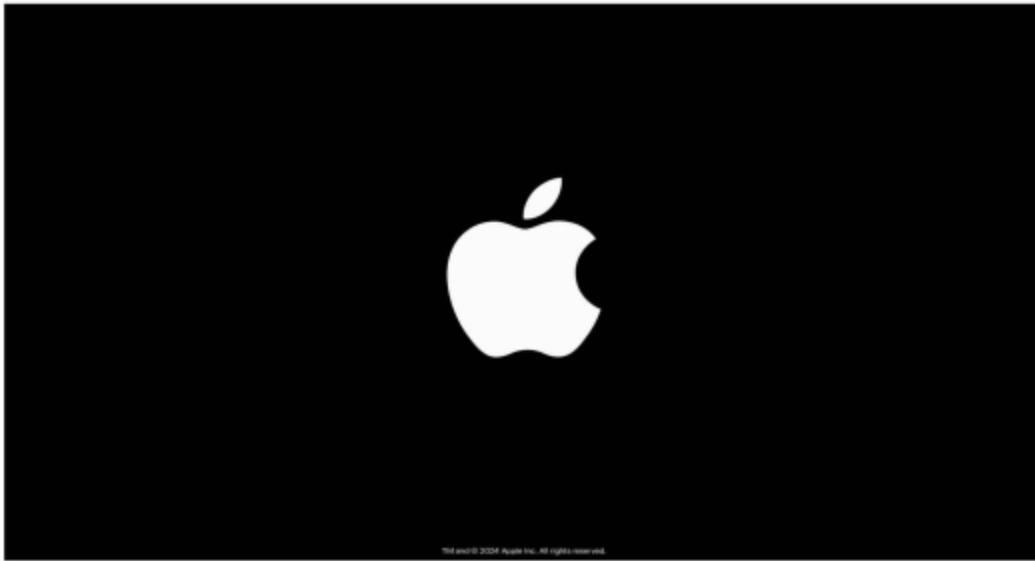
- Apple will charge a commission on out-of-app purchases of digital goods and services facilitated through the StoreKit Purchase Link Entitlement
- A 27% commission will be applied to transactions for digital goods and services that take place on a developer's website within seven days from the link out. This applies to subsequent renewals of auto-renewing subscriptions initiated within the seven days.
- A 12% commission will be applied for participants in the Small Business Program or for auto-renewing subscriptions in their second year or later.
- The Court did not enjoin Apple's core business model of monetizing the App Store by charging a percentage commission rate on sales of digital goods and services facilitated by its platform. Instead, it found that "under all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional."
- Apple's commission supports its continued investments in the App Store and its developer ecosystem....

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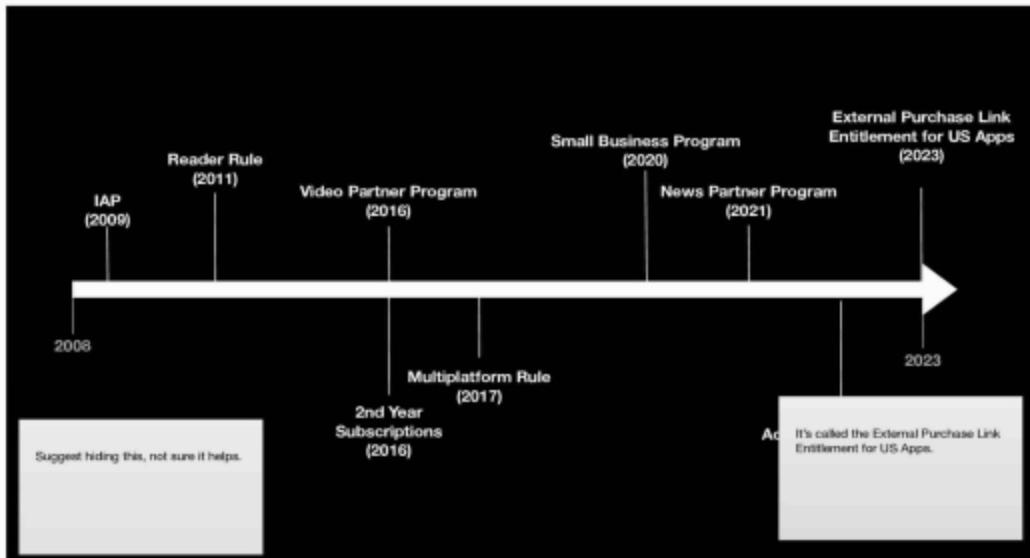
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- This includes the tools we give developers to create incredible apps, to the secure distribution we provide that gets them safely into the hands of customers around the world.
- We offer and relentlessly improve a wide and growing range of technologies to help developers create their apps: from compilers, programming languages, operating systems, frameworks, APIs, testing tools, performance tools and more.
- We have teams in markets around the world who partner with developers to help them create apps and succeed on the App Store.
- We work hard to support developers because we know they have lots of other choices for distributing their apps and services - from app stores to gaming consoles to the open Internet.
- This entire experience gives our customers the confidence to download and buy from any app on the Store.
- Thank you for your time today. Now I'll pass it back to Marni.



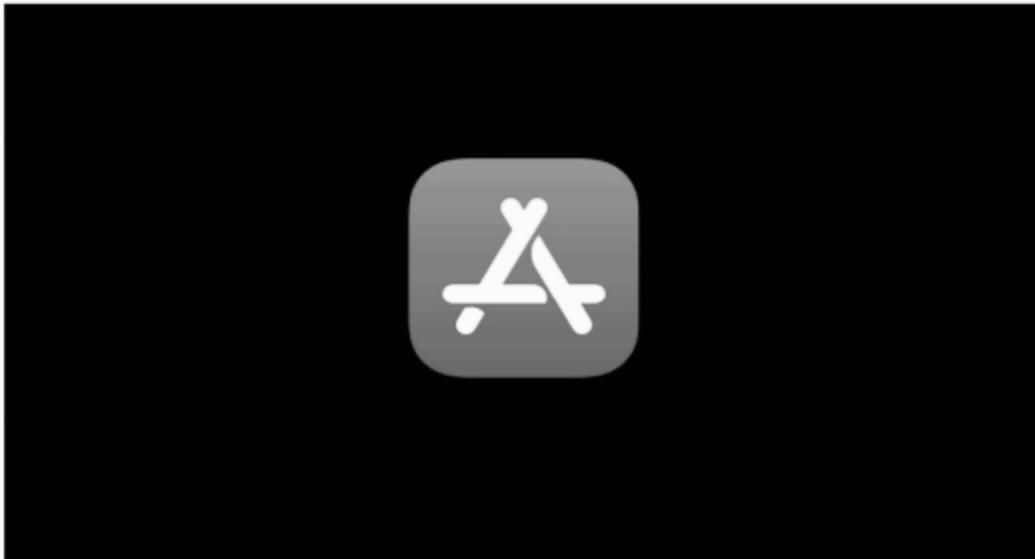
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- We've also continued to evolve the commission model of the App Store over the last 15 years based on the feedback from developers and users, as well as changes in the market. Over the years, we've only made our business model more flexible, such as the addition of Reader Rule in 2011 and the Multiplatform Rule in 2017, as well as reducing our commission for developers, through the introduction for tenured subscriptions in 2016 and the Small Business Program in 2020.
- This new capability for developers is a continuation of process, which now allows developers to communicate and link out from within their app to alternative ways to buy outside of the app.



- Almost 15 years ago, we introduced the App Store with just 500 apps. The App Store not only provided the ability for developers to build native apps on the iPhone; it also created a simple way for all developers to reach Apple users.
- **[CLICK]**
- In the 15 years since, the App Store ignited a cultural and economic phenomenon that's created new industries and changed how people work, play, travel and so much more.
- From the beginning, the App Store's two mains goals have been simple:





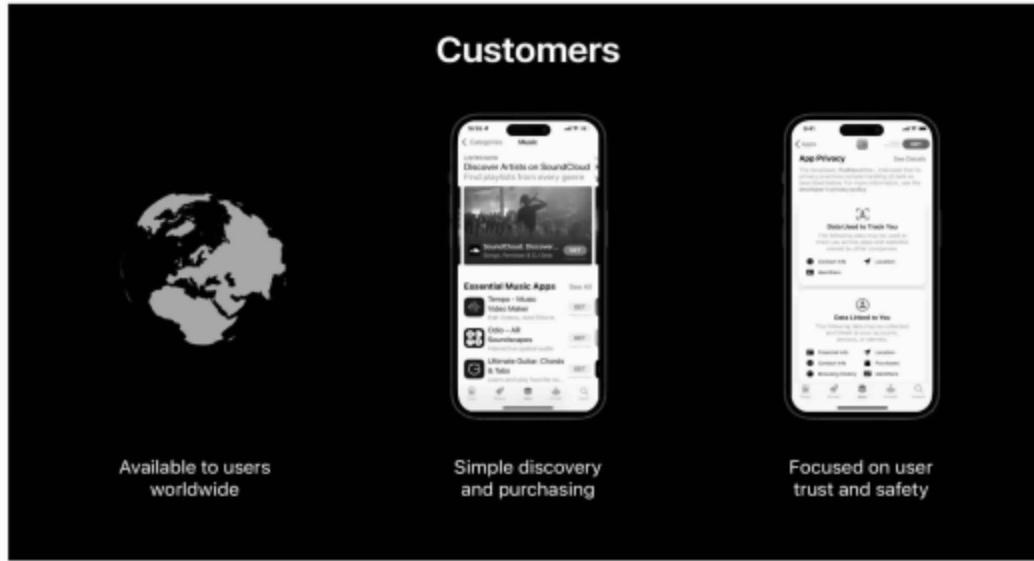
- To provide customers with a safe and trusted place for users to discover and download apps
- And to offer a great business opportunity for all developers.





Customers

- To deliver on our customer promise, we built an App Store unlike any that came before.
- One that's available in users in 175 markets around the world.
- An App Store that made it incredibly easy for those users to explore, download, and buy apps.
- And an App Store that integrates user trust, safety and privacy into every facet of the experience.





- A key element required to maintain this customer experience is our App Review Guidelines and the App Review team
- Since the beginning of the App Store, the App Review team reviews every app before it's released to users on the App Store, making sure the apps don't contain malware; have harmful, unsafe or illegal content; or impact device performance.
- The App Store Review Guidelines provide clear direction to developers on how build apps for iOS to comply with App Store rules.
- The Guidelines have been public since 2010, and they apply to all developers, **without exception**. We don't make exceptions for any developer, no matter how large or influential they may be.
- We also update the Guidelines from time to time so that we can protect customers from evolving fraud and safety concerns, and to make sure that the App Store remains a fair place for developers to do business. In doing so, we make sure to listen to developers to accommodate new business models, acknowledge changes in market dynamics, or to address concerns.



"The developer and us have the same exact interest, which is to get as many apps out in front of as many iPhone users as possible."

Steve Jobs, MacWorld 2008

- Turning to developers, one of the key reasons why the App Store has worked so well is that, from the very beginning, Apple's success has been tied to the success of the developers that operate on the App Store.
- When Steve Jobs announced the App Store in 2008, he said that "the developer and us have the exact same interest, which is to get as many apps out in front of as many iPhone users as possible."
- To accomplish this goal, it's critical that we support the health and diversity of the app catalog available to users...

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**Additional VO Points:**

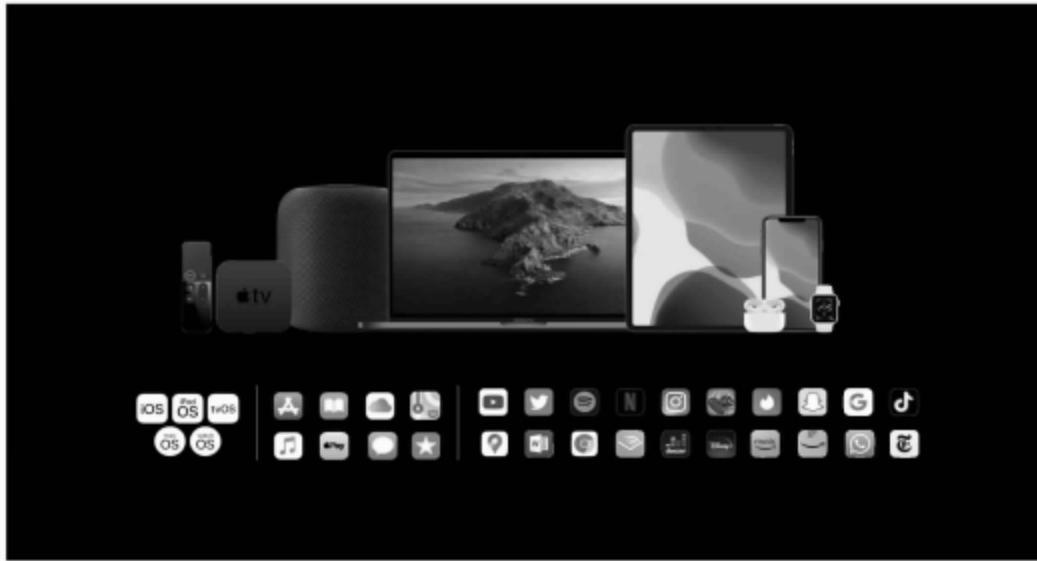
Thinking about the balance between Apple's autonomy and developers' access, we want you to understand our incentives for managing the App Store.



- This includes Apple's own apps, as well as third-party apps, because they collectively make our hardware products more attractive to consumers.
- Maintaining a robust app ecosystem drives the sale of our hardware products, which is Apple's core business. It also helps keep us competitive with Android.
- We have strong incentives to keep our ecosystem open to developers and to deliver choice and quality to our consumers. This is why we're deeply committed to continuing to foster and grow this ecosystem.

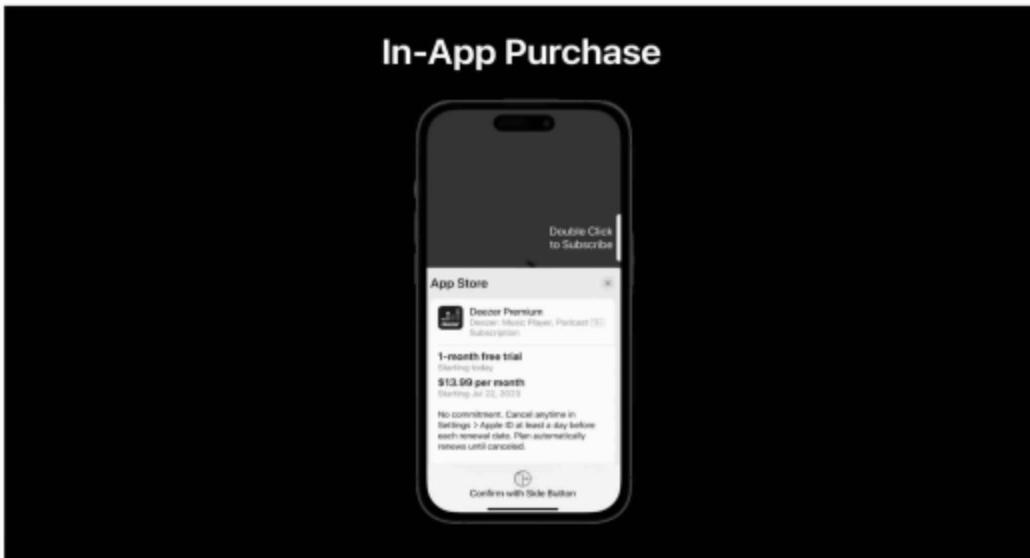
—  
**Additional VO:**

- We don't have any incentive to impede the success of third party apps with arbitrary or unfair rules. We have every reason to support developers.





- In response, we introduced In-App Purchase, or IAP, in 2009. This enabled customers to download a single version of an app and then pay to unlock different content and functionality. This was a major benefit to users because it allowed them to experience new apps before committing to paying for additional features, functionality and content.



- Since 2009, IAP has operated as Apple's centralized in-app payment system, one that provides a safe, simple, and secure way for consumers to make purchases of digital content, and that enables Apple to collect its commission.
- IAP also enables core App Store user features, such as centralized subscription management, purchase history, and "Ask to Buy."
- The latter feature allows families to provide kids the freedom to "ask to buy" an in-app item by sending a request to a parent or guardian for approval. This is just one example of how Apple leverages integrated technologies, like IAP, to create safer and more compelling experiences for its users.

Additional VO:

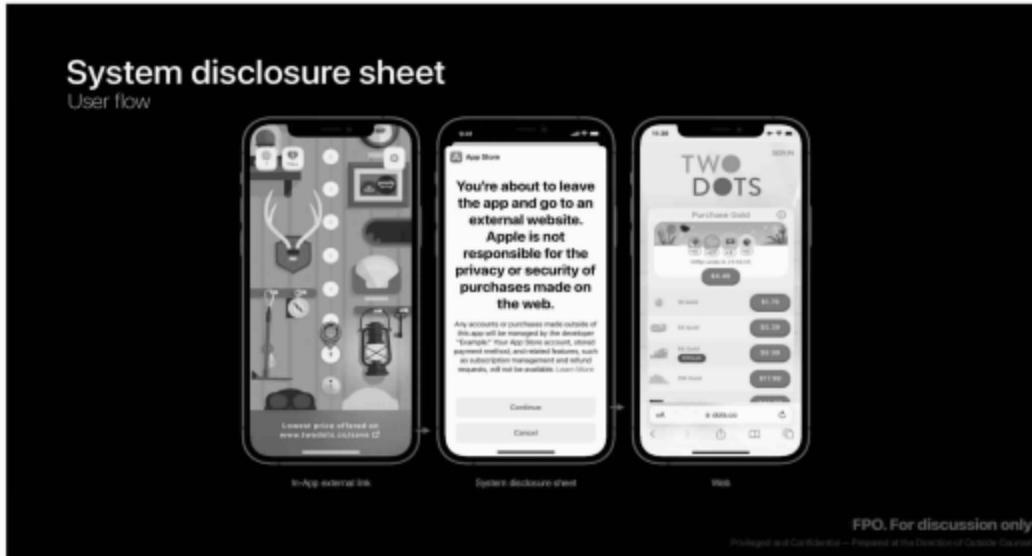
- IAP is great, in particular for less well known developers without a strong brand, as it reduces friction by enabling one-click purchasing.

## Multiplatform Services Rule

"Apps that operate across multiple platforms may allow users to access content, subscriptions, or features they have acquired elsewhere, provided those items are also available as in-app purchases within the app."

App Store Review Guidelines, Multiplatform Services Rule

- Apple continued to build on this principle over time. In 2017, Apple introduced the Multiplatform Services Rule in its Guidelines. Similar to the Reader Rule, this change was based on feedback from developers - in this case, Microsoft for its game, Minecraft.
- The Multiplatform rule allows all developers to sell digital content outside the App Store and make that content available to users in their iOS app, so long as those items are also available for purchase in the app.
- This means that Apple receives no commission on content purchased out of the app, even when it's consumed within the app. We only receive a commission on the purchases made directly in the app.
- Many music streaming apps, like Deezer and YouTube Music, benefit hugely from the Multiplatform rule. Most of their subscribers are acquired outside the App Store, and they pay nothing for those users to download and use those apps through the App Store.



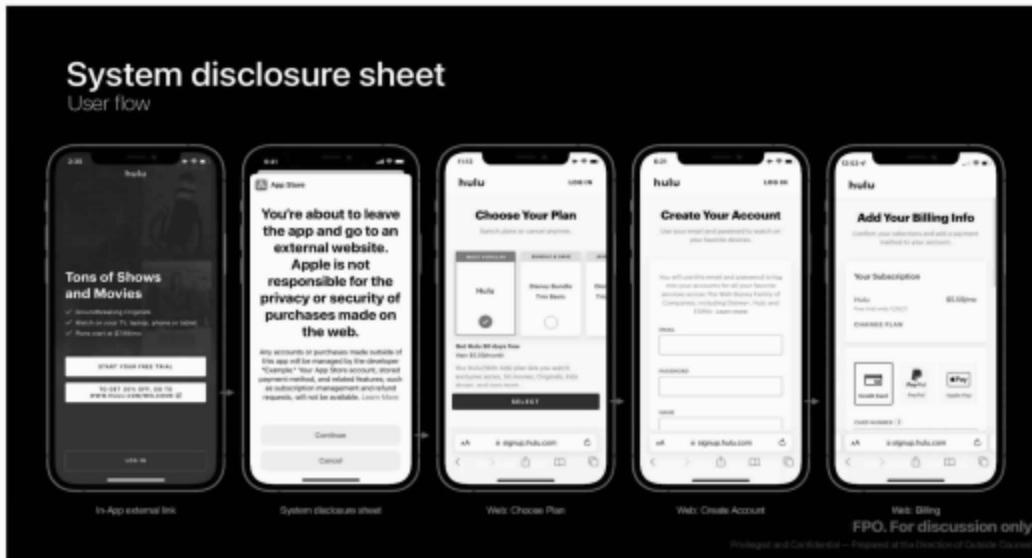
[Ann]

Here's an example of the UI flow once a customer clicks on a link out button with the updated language.

It takes a customer to a system disclosure sheet letting them know they are leaving the app and going to the web.

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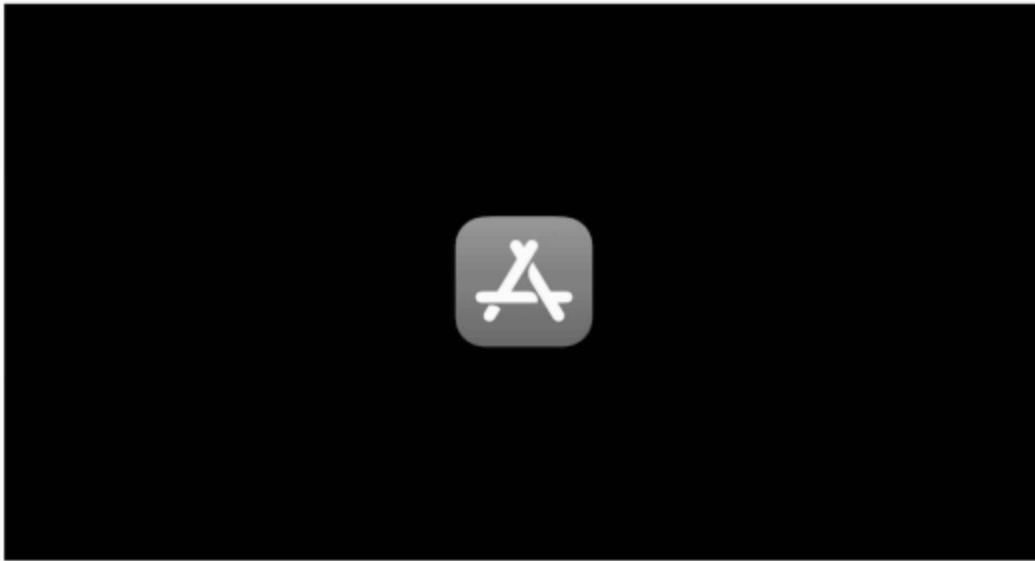


[Ann]

And here's how it could look for account-based products and services.

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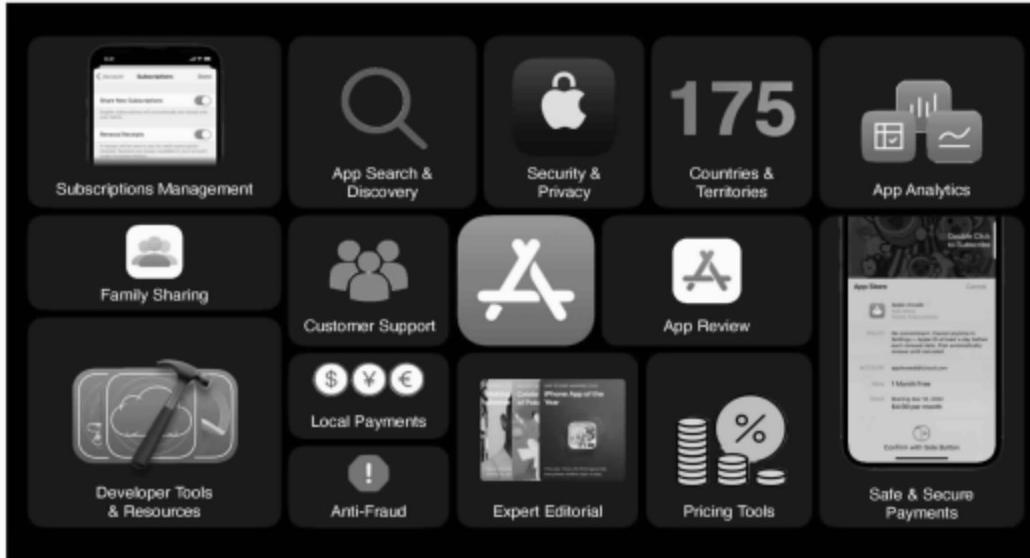
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- Apple makes significant investments in the App Store to foster the growth of this ecosystem, from users features, like expert editorial curation, centralized subscription management and Family Sharing, to critical developer features like analytics tools, as well as advanced commerce and pricing capabilities.
- We have teams based in EU countries who partner with developers to help them build great apps and succeed on the App Store.
- We work hard to support developers because we know they have lots of other choices for distributing their apps - from other mobile app stores to smart TVs to gaming consoles to the open Internet.

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-Countries  
-Languages  
-Local currencies  
-Stories  
-Expert editors  
-App Review  
-TestFlight  
-Xcode Cloud  
-In-app purchases  
-Subscriptions  
-AppleCare Support  
-Privacy  
-Safe & Secure Payments  
-Frameworks & APIs  
-Family Sharing



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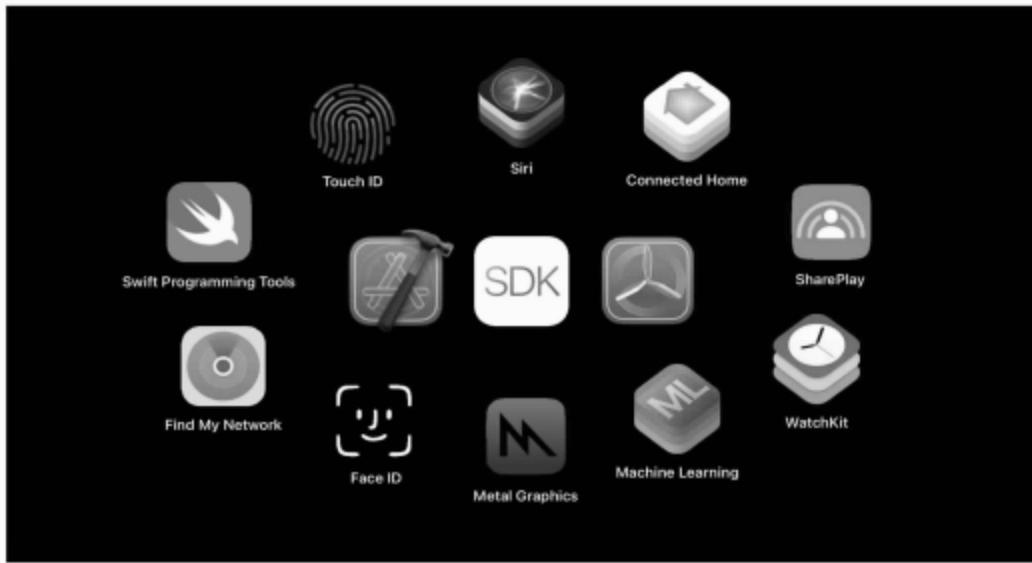
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- But Apple offers developers more than just a store. It's an end-to-end technology platform that enables developers to easily build and deliver native app experiences.
- Since we released the iOS SDK in 2008, Apple has developed and released foundational tools and technologies, like Xcode, Swift, and TestFlight, which allow developers to design, code, and test their apps.
- And every year for the past 15 years, we've introduced new APIs, frameworks and tools that are designed to help developers take their app experiences further and attract more users, from FaceID to SharePlay.
- The technologies and features we've created for developers require years of dedicated engineering work and testing before they are ready for developers to use in their apps. Apple has invested billions in supporting developers, enabling developers to access incredible technologies, like Siri or the camera, and to do so without worrying that their apps will break or otherwise suffer degraded performance.
- One of the ways that Apple funds these significant investments is through its App Store business model, a commission on the sale of digital goods and services....

- Additional VO:

- We offer and relentlessly improve on a wide and growing range of technologies to help developers build cutting-edge technologies into their apps: from compilers to programming languages, to operating systems and testing tools, to frameworks and APIs, and much more.





- This basic business model has existed since the beginning of the App Store.
- From day 1, Apple decided to apply the commission only to the sale of paid digital software because it's where we believed the App Store could add the most value - where we could help manage the experience in how that content was delivered and consumed on its devices.
- Likewise, Apple introduced the 30% commission from the beginning to cover its investments. 30% was substantially less than what developers were charged for software distribution at the time, which was often a 50-70% cut taken by retailers.
- It was our goal to bring developers to our platform, so we set the commission lower than anyone else before.
- And for developers that distributed free apps, or relied on different business models, like advertising or the sale of physical goods or services, we charged no commission at all, ensuring that we'd get as many apps on the store as possible.